FILE COPY

IN THE

Supreme Court of the United States

November Term, 1938.

No. 453

UNITED STATES TRUST COMPANY OF NEW YORK,
as Executor u/w of GEORGE H. BUNKER, deceased,
Petitioner and Appellant below,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent and Appellee below.

BRIEF FOR THE AMERICAN LEGION, *AMICUS CURIAE*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

ABRAHAM J. ROSENBLUM,
Attorney for The American Legion, *Amicus Curiae*.

Law Brief Press—New York City

IN THE

Supreme Court of the United States

November Term, 1938.

No.

UNITED STATES TRUST COMPANY OF NEW YORK,
as Executor u/w of GEORGE H. BUNKER, deceased,

Petitioner and Appellant below,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent and Appellee below.

BRIEF FOR THE AMERICAN LEGION, *AMICUS CURIAE.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The question presented in this case is of importance to all veterans of the World War who are still carrying their war risk insurance policies as term insurance or who have converted those policies to some form of ordinary life policy in accordance with the provisions of Section 310 of the World War Veterans Act of 1924, as amended May 29th, 1928 (38 U. S. C. A. 512).

According to the annual report of the Administrator of Veterans Affairs for the fiscal year ended June 30th, 1937, there were in effect at the end of that year 150 policies of yearly renewal term insurance, totalling $356,519 and 596,832 United States Government life (converted) insurance policies, totalling $2,577,982,119.

The report contained this statement (p. 22):

> "Policies in force. * * * During this fiscal year 1,153 policies amounting to $5,192,662 insurance were reinstated."

There is, of course, no way of estimating the number of veterans who may avail themselves of the privilege of applying for United States Government life insurance policies under the provisions of Section 310 of the World War Act of 1924, as amended, *supra*.

Despite the decision of the Board of Tax Appeals in *Bankers Trust Company* v. *Commissioner*, 33 B. T. A. 746, upon which the Board of Tax Appeals relied as authority for its decision in the instant case, the government has continued to make the representation to veterans who have not reinstated and converted their war risk insurance policies that the policies are exempt from all taxation. In a pamphlet designated as "Insurance form 752," entitled "Information and Premium Rates—United States Government Life Insurance," issued by the Veterans' Administration, revised February 1936, the Veterans' Administration makes this unequivocal statement:

> "A Government life insurance policy shall not be assignable, *and the proceeds of a policy are exempt from all taxation*, and shall not be subject to the claims of creditors of the insured or creditors of the beneficiary to whom they may be awarded, except claims of the United States arising under any of the laws relating to veterans." (Italics ours.)

Even more interesting is the fact that "Insurance form #724" issued by the Veterans' Administration, revised April 1937, which is called "Change of Beneficiary—United States Government Life Insurance," contains the following statement:

> "The insurance shall be exempt from all taxation and from the claims of creditors of the insured or the beneficiary, except any claims of the United States arising under any of the laws relating to veterans."

The language of the Act originally authorizing the issuance of the policies during the war specifically stated (Section 28, War Risk Insurance Act [June 25, 1918], amending Section 402, Act of October 6, 1917):

> "That the allotments and family allowances, compensation, and insurance payable under articles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under articles II, III, and IV; and shall be exempt from all taxation: * * *."

Section 22 of the World War Veterans Act (June 7, 1934) contained identical language (38 U. S. C. A. 454).

The present act (Act of August 12, 1935, 49 Stat. 607) provides that "payments made to * * * a beneficiary under any of the laws relating to veterans shall be exempt from taxation."

In recent cases decided by this Court involving veterans and veterans' statutes, there has been evident an intention to protect and to prevent any diminution of the rights accorded to veterans by the legislation enacted during the World War and since that time.

> *Lynch* v. *United States*, 292 U. S. 571;
> *United States* v. *Jackson*, 302 U. S. 628.

Contrasted with the opinion of the Board of Tax Appeals and of the court below, are the cases in the state courts which have upheld the claim for exemption from inheritance taxation in identical situations under these statutes. Most of these are cited at page 7 of the petitioner's brief. An

additional case is that of *In re Fisher's Estate*, 302 Pa. 516; 153 Atl. 736.

In sustaining the exemption of adjusted service certificates (38 U. S. C. A. 618) state courts have construed the language strictly for the benefit of veterans' estates.

> *In re Murray's Estate*, 159 Misc. 865; 289 N. Y. S. 81;
> *Jones* v. *Price*, 107 W. Va. 55; 146 S. E. 890;
> *De Baum* v. *Hulett Undertaking Co.*, 169 Miss. 488, 494; 153 So. 513, 514.

The rule which should be applied to cases of this type is set forth in *In re Murray's Estate*, *supra*, at page 866:

> "It is a familiar fact that veteran exemption acts in general have usually been accorded a liberal construction in favor of the person sought to be benefited. Yates County National Bank v. Carpenter, 119 N. Y. 550, 554, 23 N. E. 1108, 7 L. R. A. 557, 16 Am. St. Rep. 855; Surace v. Danna, 248 N. Y. 18, 24, 161 N. E. 315; Stockwell v. National Bank of Malone, 36 Hun 583, 585; Burgett v. Fancher, 35 Hun 647, 649; Lind v. Miller, 145 Misc. 477, 478, 260 N. Y. S. 343; Benedict v. Higgins, 165 App. Div. 611, 614, 151 N. Y. S. 42, 44. As was said in the last cited case: 'The broad spirit of gratitude which prompted the enactment of this law should control the courts in enforcing it.'"

CONCLUSION.

It is respectfully submitted that the Writ of Certiorari should issue as prayed for.

Respectfully submitted,

ABRAHAM J. ROSENBLUM,
Attorney for The American Legion, *Amicus Curiae*.

SUPREME COURT OF THE UNITED STATES.

No. 453.—October Term, 1938.

United States Trust Company of New York, as Executor u/w of George H. Bunker, Deceased, Petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 17, 1939.]

Mr. Justice Black delivered the opinion of the Court.

The sole question is whether proceeds of a War Risk Insurance policy payable to a deceased veteran's widow were properly included in his gross estate under a Federal estate tax.

The Federal estate tax in question[1] included in a decedent's gross estate the amount in excess of forty thousand dollars received by "beneficiaries [other than his estate] as insurance under policies taken out by the decedent upon his own life." This veteran's total life insurance for beneficiaries other than his estate exceeded at death the statutory exemption of forty thousand dollars, if his War Risk Insurance policy payable to his widow in the sum of ten thousand dollars is included. The Commissioner assessed an estate tax measured by this excess. As decedent's executor, petitioner claimed that proceeds of the War Risk Insurance policy could not be included in the estate because of Section 22 of the World War Veterans' Act, 1924, providing that such "insurance . . . shall be exempt from all taxation."[2] The Board of Tax Appeals upheld the determination of the Commissioner, and the Circuit Court of Appeals affirmed.[3]

---

[1] Section 302(g) Revenue Act of 1926, as amended.

[2] 43 Stat. 607, 613.

[3] 98 Fed. (2d) 734. State courts have differed as to whether proceeds of War Risk Insurance are subject to death duties imposed by the States. See, for example, In re Estate of Harris, 179 Minn. 450, Tax Commission v. Rife, 119 Oh. St. 83, Wanzell's Estate, 295 Pa. 419, Watkins v. Hall, 107 W. Va. 202, (holding these proceeds not subject to such excises); and Matter of Sabin, 224 Ap. Div. 702, Matter of Dean, 131 Misc. 125 (contra). In view of this fact and the importance of an authoritative interpretation of the Federal statutes involved, we granted certiorari. — U. S. —.

Congress has manifested a consistent policy in the Revenue Acts from 1918 to 1934, when the veteran died, by impositions of estate taxes upon transfers at death of proceeds of all life insurance (not payable to an insured's estate) in excess of forty thousand dollars. This has been in harmony with a general plan of graduating income and inheritance taxes to accord with the respective sizes of incomes and estates.[4] And the Treasury Regulations have stated that "The statute provides for the inclusion in the gross estate of . . . All insurance [not for the benefit of an estate] . . . to the extent that it exceeds . . . forty thousand dollars . . . . The term 'insurance' refers to life insurance of every description . . . . ."[5]

But petitioner invokes the provision of the World War Veterans' Act, 1924, that insurance thereunder "shall be exempt from all taxation." An amendment to that Act of August 12, 1935[6] provides that "Payments of benefits due or to become due . . . shall be exempt from taxation . . . . ." However, this amendment served only to clarify the original provision for exemption without more.[7] Unless resort is had to enlargement by implication, this exemption means only that the proceeds or benefits of a War Risk policy are exempt from taxation. Exemptions from taxation do not rest upon implication.[8]

An estate tax is not levied upon the property of which an estate is composed. It is an excise imposed upon the transfer of or shifting in relationships to property at death.[9] The tax here is no less an estate tax because the proceeds of the policy were paid by the Government directly to the beneficiary; the taxing power was nevertheless exercised upon "the transfer of property procured through expenditures by the decedent with the purpose, effected at his death, of having it pass to another."[10] In an analogous situation, Federal bonds exempt by statute from all taxation have been

[4] See, 44 Stat. 9, 21, 22; 48 Stat. 680, 684, 754.

[5] Treasury Regulation No. 70, (1929 Edition), Articles 25 and 27; Treasury Regulation No. 80, (1934 Edition), Articles 25 and 27.

[6] 49 Stat. 607, 609.

[7] Lawrence v. Shaw, 300 U. S. 245, 249.

[8] Rapid Transit Corp. v. New York, 303 U. S. 573, 592, 593; Trotter v. Tennessee, 290 U. S. 554, 556, 557; J. W. Perry Co. v. Norfolk, 220 U. S. 472, 480; Theological Seminary v. Illinois, 188 U. S. 662, 672.

[9] Reinecke v. Northern Trust Co., 278 U. S. 339, 347; Chase National Bank v. United States, 278 U. S. 327, 334; United States v. Jacobs, — U. S. —, p. —.

[10] Chase National Bank v. United States, *supra*, 337.

held subject to a Federal inheritance tax.[11] And State inheritance taxes can be measured by the value of Federal bonds exempted by statute from State taxation in any form.[12] Similarly, the statutory immunity of War Risk Insurance from taxation does not include an immunity from excises upon the occasion of shifts of economic interests brought about by the death of an insured.

Petitioner makes the further point that the inclusion of proceeds of the War Risk policy for purposes of an estate tax amounts to an impairment of the Government's contract with the insured veteran, a violation of the Fifth Amendment to the Constitution. But neither the Act of 1924, as amended, nor any of the provisions of the War Risk Insurance Act purported to exempt War Risk Insurance from death duties. Therefore, no statutory exemption which could be considered a provision of the insurance contract has been affected by the imposition of the estate tax in this case. The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[11] Murdock v. Ward, 178 U. S. 139.

[12] Plummer v. Coler, 178 U. S. 115.